

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials consist of (1) a report by Alvarez and Marsal with the Institute for Supply Management (collectively, "A&M"), filed as Appendix C to the Postal Service's comments in response to Order No. 3673, and (2) two charts with projections of the Postal Service's financial condition, filed as Appendix G. The Postal Service is filing these appendices separately under seal with the Commission. Redacted versions of the appendices accompany the Postal Service's public filing.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

Information of a commercial nature, which under good business practice would not be publicly disclosed, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).¹ Because the portions of materials filed

¹ The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement

non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

Not applicable. The Postal Service is the only party with a proprietary interest in the sensitive business information contained in these materials.

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

Appendix C contain the results of a comprehensive study by A&M of the Postal Service's operations. In the non-public portions of Appendix C, A&M identifies numerous opportunities for operational changes, quantifies the estimated cost savings of many of these opportunities, and describes their analysis in detail.

The non-public version of Appendix G contains 10-year forecasts of the Postal Service's losses and liquidity.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

With respect to Appendix C, postal management is continuing to evaluate the opportunities identified by A&M for implementation. As such, the information is subject to the deliberative process privilege. If the non-public information were disclosed

interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

publicly, it would have a chilling effect on management deliberations and on management's willingness to engage in similar comprehensive operational evaluations in the future.

In addition, the non-public information in Appendix C relating to potential operational initiatives is of a commercial nature and would not be disclosed publicly as a matter of good business practice in the private sector. Many of the identified opportunities would require consultation with and/or consensus from labor organizations and/or suppliers. Disclosure of this information could harm the Postal Service's position in negotiations with such parties.

Finally, competitors could use the information in Appendix C to identify purported inefficiencies in the Postal Service's operations that give the competitors a relative advantage. The competitors could then use that information to give themselves an unfair advantage in targeting customers and winning business at the Postal Service's expense.

With respect to Appendix G, the projections reflect internal judgments and assumptions about various sensitive aspects of the Postal Service's business. The Postal Service does not routinely publicize year-by-year forecasts of its financial condition. Such information would not be disclosed publicly as a matter of good business practice in the private sector.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Identified harm: Revealing predecisional, deliberative information would chill management decisionmaking.

Hypothetical: The opportunities identified by A&M are revealed to the public. One or more of the opportunities is reported in the media, accurately or not, as something that postal management is imminently considering. Members of the public and elected officials who disagree with the idea exert pressure on postal management not to pursue the opportunity, and postal management complies in the interest of preserving goodwill for other initiatives.

Even if this sequence of events does not literally come to pass, the mere fact of public knowledge and the prospect of public reaction could influence management's willingness to pursue opportunities to improve efficiency, or even to conduct or participate in similar studies in the future.

Identified harm: Public disclosure of the non-public information would provide labor organizations and/or suppliers extraordinary negotiating power to extract concessions.

Hypothetical: The opportunities identified by A&M are revealed to a labor organization whose members are affected by one of more of the opportunities. The disclosure occurs before management has decided on an implementation strategy and provided relevant information to the labor organization in the normal course of business. The labor organization then has additional time and a full appreciation of the potential scope and savings opportunity of the initiative that management is considering. The labor organization then develops an understanding of what the initiative is worth to postal management and how much leverage it will have to demand concessions in exchange for its consent: an understanding that the labor organization would not have had without

the comprehensive information in the A&M study. (It should be noted that it does not matter whether the labor organization's inference from the A&M study is correct. Even if postal management decides to pursue a narrower version of one of the identified opportunities, the labor organization may still base its assessment of its leverage on the A&M study.)

Identified harm: Public disclosure of non-public information would be used by competitors to the detriment of the Postal Service.

Hypothetical 1: The opportunities identified by A&M are revealed to a competitor. The competitor realizes that one of the opportunities renders the Postal Service less efficient than the competitor in a way that affects the pricing or service of a competitive product. The competitor then identifies potential customers for whom the efficiency of that particular product is important and markets aggressively to them, winning them away from the Postal Service.

Hypothetical 2: The opportunities identified by A&M are revealed to a competitor. The competitor perceives that implementation of one of the opportunities would make the Postal Service more efficient than the competitor in that regard. The competitor then uses that inside information to focus its own efficiency improvement efforts and maintain or gain a competitive advantage. The competitor would not have been able to preempt and neutralize the Postal Service's potential competitive advantage in this way without access to the A&M study.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the market for parcel and expedited services, as well as their consultants and attorneys. Additionally, the Postal Service believes that representatives of postal labor organizations and suppliers should not be provided access to the non-public materials. Beyond those entities, members of the general public should generally not be granted access to the non-public materials without strict, legally binding nondisclosure commitments.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof;

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.